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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

VICKI CORONA,

Plaintiff and Appellant,

v.

MARIYAM GASPARYAN,

Defendant and Respondent.

B283658

(Los Angeles County
Super. Ct. No. BC577738)

APPEAL from a judgment of the Superior Court of Los Angeles County, Charles F. Palmer, Judge. Dismissed.

Vicki Corona, in pro. per., for Plaintiff and Appellant.

Law Offices of Dan D. Endoso & Associates and Andrea Torosyan for Defendant and Respondent.

Plaintiff Vicki Corona appeals from a judgment entered in favor of defendant Mariyam Gasparyan following a court trial. We conclude the appeal must be dismissed because Corona failed to timely file her notice of appeal.

DISCUSSION

Corona and Charles Hodges filed this action against Gasparyan for damages arising from a motor vehicle accident. Hodges dismissed his case before trial. Following trial, the court found Corona, who represented herself at trial, had failed to meet her burden of proof, and there was no evidence of causation of damages. The court entered judgment on March 21, 2017.

Corona's notice of appeal was dated May 16, 2017; it had a proof of service dated May 19, 2017. However, it was stamped received and filed in the superior court on June 30, 2017.

On October 3, 2018, we sent the parties a letter pursuant to Government Code section 68081, requesting additional briefing addressing the question whether Corona's notice of appeal was untimely and therefore the appeal must be dismissed.

We explained: The judgment of dismissal was entered on March 21, 2017. The case summary indicated that notice of entry of judgment was filed on March 21, 2017. Corona filed her notice of appeal on June 30, 2017, 101 days later. California Rules of Court, rule 8.104(a)(1) provides that a notice of appeal must be filed within 60 days of service of the notice of entry of judgment. This time limit is mandatory and jurisdictional. (*Ellis v. Ellis* (2015) 235 Cal.App.4th 837, 842.) "If a notice of appeal is filed late, the reviewing court must dismiss the appeal." (Cal. Rules of Court, rule 8.104(b).)

Corona submitted a response to our letter stating that she mailed her notice of appeal to the court and Gasparyan's trial counsel, Sheryl Reeves, on May 19, 2017. She supported this with a post office receipt for stamps dated May 19 and the last page of a notice of appeal stating that it was served on Reeves by mail on May 19.

Corona explained that her notice of appeal was mailed to the superior court on May 19. She filed a notice designating record on appeal on May 22. Corona received a letter on June 13, 2017 from the court clerk stating that the notice was rejected because there was "no indication that an appeal was ever filed in our office." She believed the superior court clerk lost her original notice of appeal, so she sent a new one to the clerk on June 23. Corona also filed another notice of designation of record. She had no idea "what happened to the original Notice of Appeal at the filing window," but "[i]t would appear that the Clerks, for reasons unknown . . . , simply wanted this case dismissed without good cause and did all in their power to accomplish that."

There is nothing in the record to show that Corona timely filed her notice of appeal. There is no proof of service of the notice of appeal, no signature card from the post office showing the superior court clerk's office received the notice of appeal but failed to file it, no sworn affidavit or declaration from whoever mailed the notice of appeal to the court (see, e.g., *Lezama-Carino v. Miller* (2007) 149 Cal.App.4th 55, 58 [the appellant offered declaration from process server stating notice of appeal delivered to clerk for filing but clerk refused to accept it because waiting on waiver of costs]). All we have is Corona's statement that she timely filed her notice of appeal and the superior court clerk's office lost or deliberately misplaced it.

In *Estate of Crabtree* (1992) 4 Cal.App.4th 1119, the court noted the Evidence Code section 664 “presumption that ‘official duty has been regularly performed’ . . . applies to the duties of clerks of court. [Citations.] Thus we must presume, in the absence of affirmative evidence to the contrary, that the clerk performed his duty and endorsed the notice of appeal with the date it was in fact presented to him for filing.” (*Id.* at p. 1125.) The attorney attempted to overcome this presumption with declarations from the attorney’s secretary and a supervisor of the messenger service used as to the date the messenger picked up the notice of appeal for filing. (*Ibid.*) Conspicuously absent was a declaration by the messenger who, according to the appellant’s counsel, had no recollection as to filing this particular notice of appeal. (*Id.* at p. 1126.) The court concluded: “given what we perceive as significant gaps in the evidentiary record presented by [the appellant], we do not believe she has overcome the presumption the notice of appeal was filed on January 3, 1991.” (*Ibid.*)

Similarly here, Corona has not overcome the presumption that her notice of appeal was filed on June 30, 2017, the date it was stamped received and filed by the superior court clerk’s office. Therefore, the notice of appeal was untimely and the appeal must be dismissed.¹

¹ Corona’s motion to augment the record is denied.

DISPOSITION

The appeal is dismissed. Gasparyan is to recover her costs on appeal.

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JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.